IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.3692 OF 1995

MRS. SUBHADRA NARAYANAN KUTTY ... PETITIONER.

VS.

KERALEEYA SAMAJAM & ORS. .... RESPONDENTS.

MR. MIHIR DESAI FOR THE PETITIONERS.

MR. P.K.RELE SR. ADVOCATE WITH MR. VINOD TAYADE FOR THE RESPONDENT NO. 1

ALONGWITH

WRIT PETITIONNO. 3707 OF 1995

KERALEEYA SAMAJAM

DOMBIVLI (E) AND ANR. ... PETITIONERS.

VS.

MRS. SUBHADRA NARAYANAN KUTTY

DOMBIVLI (E),

DIST. THANE AND ANR. ... RESPONDENTS.

MR. P.K.RELE SR.ADVOCATE WITH MR. VINOD TRAYADE FOR THE RESPONDENT NO.1.

MR. MIHIR DESAI FOR THE RESPONDENTS.

CORAM : A.P. DESHPANDE, J.

DATE : January 10, 2007.

-: ORAL JUDGMENT :-

1. Writ petition No. 3692 of 2005 is filed by one Mrs. Subhadra Narayanan Kutty, who was the appellant before the School Tribunal, questioning the legality and validity of the action on the part of the Management in terminating the petitioner from services; whereas, the writ petition No. 3707 of 1995 is the writ petition filed by the School Management, interalia challenging the same judgment and Order, which is impugned in the first writ petition.

2. Though the employee's appeal was allowed by the Tribunal, it granted re-instatement in the post of assistant teacher and hence, a prayer is made in writ petition No. 3692 of 1995 to grant re-instatement in the post of Asstt Headmistress, as the petitioner was substantivally holding the said post. The Management, on the other hand, in the latter petition, assail the Order of the Tribunal, directing the reinstatement.

3. The controversy in these petitions lies in narrow factual matrix. The Petitioner was appointed in

Model English High School as an assistant teacher. The appointment was given by the Management-Respondent in the year 1974. The, petitioner is a trained teacher possessing requisite qualification of B.Sc.B.Ed. On the basis of the petitioner's seniority and qualification, she was appointed as Supervisor in the year 1981. The Petitioner was promoted to the post of assistant headmistress in April, 1989 and since April, 1989, till the termination, the petitioner was substantivally holding the post of assistant Headmistress. As a vacancy was caused in the post of Headmistress, the petitioner was made to work as Incharge Headmaster, with effect from 30th April 1994. It will not be out of place to state that as the earlier Headmaster was placed under suspension, the petitioner was asked to officiate as Incharge Headmistress, from April, 1994. The record reveals that the school in question is an unaided school and there was dispute in between the Management on one hand and the employees on the other in regard to payment of the salaries, as prescribed by the rules. The dispute between the Management and the employees resulted in the employees going on strike and holding the petitioner responsible for the strike, the petitioner's services came to be terminated.

4. It is an undisputed fact that the petitioner was a permanent employee, holding substantivally the post of Assistant Headmaster. It is yet again undisputed that the termination of the petitioner was effected without any inquiry whatsoever and in total defiance of the rules in that regard contained in the M.E.P.S.Rules. Neither the enquiry committee, as required by the statute, was constituted nor was any enquiry conducted and thus, the termination of the petitioner was in blatant violation of the principles of natural justice and the mandatory rules governing the conduct of the enquiry. The Tribunal rightly found that the termination was unsustainable in law as the same was effected without holding any enquiry. The impugned penal Order was stigmatic in nature. In normal course, on quashing of an Order of termination, the petitioner would be entitled to reinstatement in the post which she was substantively holding. The petitioner ought to have been reinstated in the post of Assistant Headmaster, but it appears that the Tribunal was not mindful of the fact that the petitioner was substantivally holding the post of an Assistant Headmaster and perhaps labouring under impression that the petitioner was holding the post of assistant teacher, has directed reinstatement of the petitioner in the post of the assistant teacher. No

doubt in the concluding paragraphs of the judgment, the Tribunal has observed that the Headmaster has to perform certain specific duties and expected to keep good relations with Management for smooth running of the school. But the said discussion is in view of the claim made by the Petitioner for her reinstatement as Incharge Headmistress. There is nothing wrong in the Order of the Tribunal, denying petitioner's reinstatement as Incharge Headmistress, however, as discussed above, the petitioner was very much entitled to be reinstated to the substantive post which she was holding on the date of her termination and the same was the post of Assistant Headmaster.

5. Turning to the other petition, filed by the Management, suffice it to state that the Order of the Tribunal directing the reinstatement of the appellant is proper, for the obvious reason that the termination was effected without holding any enquiry and was in breach of principles of natural justice and statutory rules, regulating the conduct of the enquiry.

6. To conclude, I am of the considered view that the Tribunal has committed an error in granting the reinstatement to the petitioner in the post of assistant

teacher and the reinstatement ought to have been in the post of Assistant Headmistress. Hence, the writ petition No. 3692 of 1995 deserves to be allowed; whereas, the writ petition No. 3707 of 1995 deserves to be dismissed.

7. In the result, the Order passed by the Tribunal stands modified to the extent that the Respondent-School Management is directed to reinstate the Petitioner in Writ Petition No. 3692 of 1995 in the post of Assistant Headmistress with continuity of service from the date of the termination. The Respondent shall pay the difference of salary and emoluments to the petitioner in the pay scale admissible to the post of Assistant Headmistress.

8. Consequently, Rule is made absolute with the above mofidication in the Writ Petition No. 3692 of 1995. The writ petition No. 3707 of 1995 stands dismissed.

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[A.P.DESHPANDE, J.]

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.3692 OF 1995
WITH
WRIT PETITION NO. 3707 OF 1995

DATE OF DECISION : 10.1.2007

For approval and signature :

The Hon'ble Mr. Justice A.P.Deshpande :

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ?

3. Whether Their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an

important question of law and whether a copy of the judgment should be sent to Nagpur Office?

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